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APR 15 2003

In re Application of:  
Yoshihisa NAGANO et al.  
Serial No.: 09/103,873  
Filed: June 24, 1998  
Attorney Docket No.: YAO-3950

DECISION ON PETITION

This is a decision in response to the communication filed November 4, 2002. The communication has been treated as a petition under 37 C.F.R. § 1.181, requesting the finality of the Office action mailed September 24, 2002 be withdrawn. No petition fee is required.

The petition is **DENIED**.

In support of the petition, it is asserted that “[d]uring the interview, the Examiner agreed that existing claims 2 and 30-31 included features not disclosed by the art of record. This is indicated in the Interview Summary (a copy of which is attached) drafted by the Examiner.” Accordingly, claim 1 has been amended to include the limitation of claim 2. Amended claim 1 stands rejected under 35 USC § 103(a) as being unpatentable over applicant’s acknowledged prior art in view of Matsuura et al., and the rejection was made final.

The petition to withdraw the finality of the Office action mailed September 24, 2002 must be supported by a showing that the finality was improper or premature.

In the instant application, it appears that petitioner is alleging that the finality of the Office action is premature. Petitioner argues that because claim 1 was rejected despite an alleged agreement to allow the claim, the Office action should not have been made final.

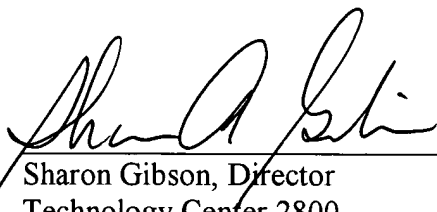
Upon carefully reviewing the prosecution history of the instant application, claims 1 and 2 were rejected under 35 USC § 103(a) as being unpatentable over applicant’s acknowledged prior art in view of Matsuura et al. in the Office action mailed April 9, 2002. The same rejection was maintained in the subsequent Office action mailed September 24, 2002. Therefore, pursuant to

M.P.E.P. § 706.07(a), it is proper to make the subsequent Office action final since the same ground of rejection has been applied.

Furthermore, petitioner's argument that, during the personal interview, the examiner agreed that the subject matter of claim 2 was not disclosed by the prior art cannot be substantiated because the Interview Summary dated April 29, 2002, does not indicate that such agreement was reached.

For the above stated reasons, the Office action mailed September 24, 2002 was properly made final. Accordingly, the petition is denied.

The application is being forwarded to the technical support staff for processing the Request for Continued Examination filed March 4, 2003. From there, the application will be returned to the examiner for further examination.



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